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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,632	02/18/2004	Theodore R. Zeigler	000002-001	9087

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WRB-IP LLP  
1217 KING STREET  
ALEXANDRIA, VA 22314

EXAMINER
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BARTOSIK, ANTHONY N

ART UNIT	PAPER NUMBER
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3635

NOTIFICATION DATE	DELIVERY MODE
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07/22/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/779,632	<b>Applicant(s)</b> ZEIGLER, THEODORE R.	
	<b>Examiner</b> ANTHONY N. BARTOSIK	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 23-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-8,10,11,16 and 17 is/are rejected.
- 7) ☒ Claim(s) 2,3,9,12-15 and 18-22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/18/2004 & 5/19/2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

After review of Applicant's Amendments, which were submitted pursuant to the Interview of February 17, 2009, additional 35 USC § 112 issues were discovered and are present in the application and must be addressed. Accordingly, a Non-Final Rejection is issued pursuant to those issues as well as to newly found applicable prior art.

#### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the locking struts (33) and the second struts (37) as two separate members as described in the specification. While Figures 1A and 1B disclose adequate representations, Figures 2, 3, and 5 disclose the locking strut and second strut as one single strut. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency.

Art Unit: 3635

Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 35c & 35d. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3635

4. Claims 4, 16, and 17-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 4 is indefinite due to the language of the tension member in connection with the functional language. As currently drafted claim 1 does not contain enough structure for one having skill in the art to practice the invention with a cover as the tension member. As illustrated in Figure 1A of the present invention, the cover (29c) is attached to the hubs (25, 43a, & 43b), however, the second hubs (43a & 43b) are not set forth within claim 1. Placing a tension member on the claimed structure would not allow it to function so that the tension member was adapted to limit the movement.

6. Claim 16 is indefinite due to the lack of nexus of the elements in claim 16 to those of claim 12 from which it depends. Claim 12 sets forth at least two second struts, at least two second hubs, and at least two third hubs. Claim 16 then sets forth four second struts, four second hubs, and four third hubs. As written within the claims it is not sufficiently clear that the at least two hubs and struts of claim 12 are the four hubs and struts of claim 16 due to the lack of language creating the relationship. Including language such as, "where the at least two second struts includes four second struts" for example, would create the nexus needed to give the claim clarity.

Claim 16 also includes "a tension member" which is in addition to the tension member of claim 1. As currently drafted, claim 16 includes two separate tension

Art Unit: 3635

members. Two tension members are clearly supported by the specification, but it is not clear if this is the intended result. If two separate tension members are intended, including language that states "a second tension member" would be suggested in order to clarify the scope of the claim. If only one tension member is intended, replacing "a" with "the" would clarify the inclusion of only one tension member.

7. Claim 17 is rejected to for the reasoning set forth in claim 16 regarding the multiple struts and hubs as well as the tension members.

***Claim Rejections - 35 USC § 102***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**9. Claims 1, 5, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Chou (U.S. 6,401,735).**

10. In Re claim 1, Figure 2-6 of Chou disclose at least two struts (50) pivotably connected at first ends thereof to the first hub (30) and movable relative to each another between a folded position and an expanded position;

Art Unit: 3635

a tension (23) member adapted to limit pivotable movement of the at least two struts such that,

when in the expanded position, the at least two struts define an angle of less than 180°; a locking hub (40) having no rigid connection to the first hub (30); and

at least two locking struts (53) pivotably connected at first ends thereof to the locking hub (40) and, at second ends thereof, to connection points on respective ones of the at least two struts (53).

11. In Re claim 5, Figure 4 of Chou discloses the tension member including a base (22).

12. In Re claim 10, Figure 4 of Chou discloses at least three struts.

13. In Re claim 11, Figure 4 of Chou discloses at least four struts.

***Claim Rejections - 35 USC § 103***

14. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**15. Claims 6, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chou (U.S. 6,401,735).**

16. In Re claim 6, Chou discloses the basic claim structure of the instant application but does not disclose specific dimensions. Applicant fails to show criticality for specifically claimed dimensions, therefore it would have been an obvious design choice to use the dimensions such as specified in these claims.

17. In Re claim 7, when Chou is expanded from the folded position to its usable position, the angle as defined by claim 7 changes, therefore at some point in the expansion the limitations of claim 7 will be met.

18. In Re claim 8, when Chou is expanded from the folded position to its usable position, the angle as defined by claim 7 changes, therefore at some point during the expansion, the limitations of claim 7 will be met. Furthermore, a change of size is generally recognized as being within the level of ordinary skill in the art. MPEP 2144.04.

***Allowable Subject Matter***

19. Claims 2, 3, 9, and 12-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3635

20. Claims 4 and 16 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

21. Claim 17 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

22. Claims 18-22 would be allowable if claim 17 is rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY N. BARTOSIK whose telephone number is (571)270-3112. The examiner can normally be reached on M-F 7:30-5:00; E.D.T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./  
Supervisory Patent Examiner, Art Unit 3635

Anthony Bartosik  
Examiner  
Art Unit 3635